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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,522	11/15/2000	David A. Kapilow	199-0096-1A	6107

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AT & T Corp
PO Box 4110
Middletown, NJ 07748

EXAMINER

HARPER, V PAUL

ART UNIT	PAPER NUMBER
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2654

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/700,522

Applicant(s)

KAPILOW, DAVID A.

Examiner

V. Paul Harper

Art Unit

2654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/26/02</u> . | 6) <input type="checkbox"/> Other: ____ |

Detailed Action

U.S. National Stage Application

1. Acknowledgement is made of the indication that the present application is filed under 35 U.S.C. 371, of the indication that the required form PCT/DO/EO/903 is present, and of the use of transmittal form PCT/DO/EO/1390. Thus, the present application is being treated as a filing under 35 U.S.C. 371.

Information Disclosure Statement

2. The Examiner has considered the references listed in the Information Disclosure Statement dated 2/26/02. A copy of the Information Disclosure Statement is attached to this office action.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/700,524 in view of Chen (U.S. Patent 5,615,298), hereinafter referred to as Chen.

Regarding claim 1, Application 09/700524 (claim 1) claims:

- generating a speech signal based on received packets representing speech information (claim 1, lines 3-4, 7-8, 12-13);
- in response to a determination that one or more packets are not available at the receiver to form the speech signal (claim 1, lines 5-6),
- synthesizing a portion of the speech signal corresponding to the one or more unavailable packets using a portion of the previously formed speech signal (claim 1, lines 9-11),

But application No. 09/700524 (claim 1) fails to specifically claim "wherein the duration of the previously formed portion used in such synthesis is determined based on a duration of packet unavailability." However, the examiner contends that this concept was well known in the art, as taught by Chen.

In the same field of endeavor, Chen teaches the process of repeatedly using previous data until a good (non-erased) frame is received (i.e., the length of the previously formed portion used depends upon the duration of the packet unavailability) (col. 5, lines 33-53).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify application No. 09/700524 (claim 1) by

specifically providing the synthesis steps, as taught by Chen, because it was well known that such a technique has low computational complexity and performs reasonable well (Perkins, p. 45, col. 2, *Repetition*).

Regarding claim 2, Application 09/700524 (claim 1) claims:

- forming a speech signal based on received packets representing speech information (claim 1, lines 7-8);
- when one or more packets are not available at the receiver to form the speech signal, determining a duration of packet unavailability (claim 1, lines 5-6);

But application No. 09/700524 (claim 1) fails to specifically claim:

- a) determining a portion of the previously formed speech signal based on the duration of packet unavailability;
- b) synthesizing a portion of the speech signal corresponding to the one or more unavailable packets using the determined portion of the previously formed speech signal.

However, the examiner contends that this concept was well known in the art, as taught by Chen.

In the same field of endeavor, Chen teaches the process of repeatedly using previous data until a good (non-erased) frame is received (i.e., the length of the previously formed portion used depends upon the duration of the packet unavailability) (col. 5, lines 33-53), corresponding to a), above; and synthesizing the missing portion of speech (col. 5, §2. Synthesis Mode), corresponding to b), above.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify application No. 09/700524 (claim 1) by specifically providing the synthesis steps, as taught by Chen, because it was well known that such a technique has low computational complexity and performs reasonable well (Perkins, p. 45, col. 2, see *Repetition*).

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen.

Regarding claim 1, Chen discloses a method for excitation signal synthesis during frame erasure or packet loss. Chen's method includes the following steps:

- generating a speech signal based on received packets representing speech information (col. 2, lines 20-31);
- in response to a determination that one or more packets are not available at the receiver to form the speech signal (Figs. 1 and 2, FRAME ERASURE, col. 4, §A. Excitation Signal Synthesis During Frame Erasure),

- synthesizing a portion of the speech signal corresponding to the one or more unavailable packets using a portion of the previously formed speech signal (col. 5, §2. Synthesis Mode),
- wherein the duration of the previously formed portion used in such synthesis is determined based on a duration of packet unavailability (col. 5, lines 33-53, the process of using previous data is repeated until a good (non-erased) frame is received).

Regarding claim 2, Chen discloses a method for frame loss concealment with coded speech. Chen's method includes the following steps:

- forming a speech signal based on received packets representing speech information (col. 2, lines 20-31);
- when one or more packets are not available at the receiver to form the speech signal, determining a duration of packet unavailability (col. 5, lines 33-53, the process of using previous data is repeated until a good (non-erased) frame is received);
- determining a portion of the previously formed speech signal based on the duration of packet unavailability (col. 5, lines 33-53, the process of using previous data is repeated until a good (non-erased) frame is received);
- synthesizing a portion of the speech signal corresponding to the one or more unavailable packets using the determined portion of the previously formed speech signal (col. 5, §2. Synthesis Mode).

Citation of Pertinent Art

4. The following prior art made of record but not relied upon is considered pertinent to the applicant's disclosure:

- Chen (U.S. Patent 6,351,730) teaches a method of audio coding with adaptive frame loss Concealment.

Conclusion

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

or faxed to:

(703) 872-9306

Hand-delivered responses should be brought to:

Crystal Park II
2121 Crystal Drive
Arlington, VA.
Sixth Floor (Receptionist)

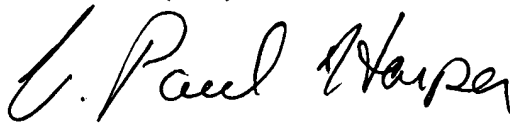
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. V. Paul Harper whose telephone number is (703) 305-4197. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil, can be reached on (703) 305-9645. The fax phone number for the Technology Center 2600 is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service office whose telephone number is (703) 306-0377.

VPH/vph
September 14, 2004



**VIJAY CHAWAN
PRIMARY EXAMINER**